



General Assembly

January Session, 2007

Raised Bill No. 1239

LCO No. 3874

03874_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING INVESTIGATIVE SUBPOENAS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2007, and in effect until October*
2 1, 2009) For purposes of sections 1 to 12, inclusive, of this act:

3 (1) "Crime" means a class A or B felony or a violation of chapter 949c
4 or section 36b-4, 36b-6, 36b-16, 53-153, 53-451, 53a-129c, 53a-129d, 53a-
5 129e, 53a-138, 53a-147, 53a-148, 53a-149, 53a-150, 53a-151, 53a-151a,
6 53a-152, 53a-153, 53a-154, 53a-158, 53a-159, 53a-160, 53a-161, 53a-161a,
7 53a-161c, 53a-161d, 53a-215 or 53a-277 of the general statutes;

8 (2) "Property" includes, but is not limited to, documents, books,
9 papers, records, films, recordings and other tangible things;

10 (3) "Prosecuting official" means the Chief State's Attorney, a deputy
11 Chief State's Attorney or a state's attorney; and

12 (4) "Subpoena" means a subpoena ad testificandum or a subpoena
13 duces tecum, or both.

14 Sec. 2. (NEW) (*Effective October 1, 2007, and in effect until October 1,*

15 2009) (a) In the investigation of conduct that would constitute the
16 commission of a crime, a prosecuting official, in the performance of
17 such official's duties during such investigation, shall have the
18 authority to compel by subpoena the appearance and sworn testimony
19 of witnesses and the production of property concerning the matter
20 under investigation. No prosecuting official may issue a subpoena
21 under this section to an attorney with respect to a former or current
22 client of such attorney, or to any person who assists or assisted such
23 attorney in representing such client, that seeks testimony protected by
24 the attorney-client privilege or property constituting attorney work
25 product. No prosecuting official may issue a subpoena under this
26 section that seeks to compel testimony or the production of property
27 with respect to the psychiatric or substance abuse treatment of a
28 person that is privileged under state or federal law or to compel
29 testimony or the production of property that is privileged under
30 section 52-146b of the general statutes. No prosecuting official may
31 issue a subpoena under this section unless authorized by a judge of the
32 Superior Court pursuant to section 3 of this act.

33 (b) In any matter in which a person has been arrested and criminal
34 charges are pending against such person, the appearance and
35 testimony of witnesses and the production of property shall be
36 governed by the court pursuant to the rules of discovery and shall not
37 be subject to the issuance of a subpoena under this section.

38 Sec. 3. (NEW) (*Effective October 1, 2007, and in effect until October 1,*
39 2009) (a) A prosecuting official who seeks to issue a subpoena under
40 section 2 of this act shall submit an application to a judge of the
41 Superior Court. Such application shall include an affidavit sworn to by
42 such prosecuting official stating that such official:

43 (1) Has reasonable grounds to believe that a crime has been
44 committed, and the facts that form the basis for such belief;

45 (2) Has reasonable grounds to believe that the person to be
46 summoned to appear and give testimony or produce property has

47 information relevant to the investigation concerning the alleged
48 commission of a crime, and the facts that form the basis for such belief;
49 and

50 (3) Has reasonable grounds to believe that the appearance and
51 testimony of such person or the production of property by such person
52 would not occur or be available without the issuance of a subpoena,
53 and the facts that form the basis for such belief.

54 (b) The judge shall review such application and affidavit and if the
55 judge finds that the provisions of subsection (a) of this section have
56 been satisfied, such judge may grant the application for the issuance of
57 a subpoena by such prosecuting official. The subpoena shall be served
58 upon the person not less than twenty-four hours, excluding weekends
59 and holidays, prior to the time scheduled for such person's
60 appearance, except that the judge may specify the date or time that
61 such subpoena shall be served upon the person, which date or time
62 shall be not less than twenty-four hours, excluding weekends and
63 holidays, prior to the date and time scheduled for such person's
64 appearance. The prosecuting official shall cause any application that is
65 granted to be filed with the clerk of the court where compliance with
66 the subpoena is required. Except as provided in subsection (c) of this
67 section, the judge shall order the court file, including the application
68 and affidavit submitted pursuant to subsection (a) of this section, be
69 sealed as to the public and not be subject to disclosure.

70 (c) Any application and affidavit submitted by a prosecuting official
71 pursuant to subsection (a) of this section shall remain confidential until
72 such time as the investigation is completed or a person is arrested,
73 except that a judge, upon written application made by a person who
74 has been summoned pursuant to subsection (a) of this section, may
75 order that a copy of the application and affidavit be provided to the
76 person summoned unless the judge finds that (1) the personal safety of
77 a confidential informant would be jeopardized by the giving of a copy
78 of the application and affidavit at such time, (2) the issuance of the

79 subpoena is part of a continuing investigation that would be adversely
 80 affected by the giving of a copy of the application and affidavit at such
 81 time, or (3) the giving of a copy of the application and affidavit at such
 82 time would require disclosure of information or material prohibited
 83 from being disclosed by chapter 959a or 960 of the general statutes.
 84 Upon the arrest of a person in connection with the issuance of the
 85 subpoena, the attorney for the person arrested shall be entitled to a
 86 copy of the application and affidavit filed by the prosecuting attorney
 87 in support of the subpoena for the person arrested unless, upon
 88 motion of the prosecuting official within two weeks of such person's
 89 arraignment, the court finds that the state's interest in continuing
 90 nondisclosure outweighs the defendant's right to disclosure. Any
 91 order dispensing with the requirement of giving a copy of the
 92 application and accompanying affidavit to the attorney for the person
 93 summoned shall be for a specific period of time, not to exceed two
 94 weeks beyond the date of the arraignment. Within that time period the
 95 prosecuting official may seek an extension of such period.

96 Sec. 4. (NEW) (*Effective October 1, 2007, and in effect until October 1,*
 97 *2009*) (a) Any subpoena issued pursuant to sections 1 to 12, inclusive,
 98 of this act shall (1) compel the appearance and sworn testimony of
 99 witnesses and the production of property relevant to the investigation
 100 being conducted, (2) specify with reasonable particularity any property
 101 to be produced, and (3) require the production of documents or
 102 records covering a reasonable period of time.

103 (b) Any subpoena issued pursuant to sections 1 to 12, inclusive, of
 104 this act shall contain a notice advising the person summoned of the
 105 following: (1) Whether such person is a target or possible target of the
 106 investigation, (2) that such person has the right not to be compelled to
 107 give evidence against himself or herself, (3) that such person has the
 108 right to have counsel present and to consult with such counsel and, if
 109 such person is indigent, to have counsel appointed to represent him or
 110 her, and (4) that, if such person is under eighteen years of age, such
 111 person has the right to have such person's parent or parents or

112 guardian present unless the judge or judge trial referee presiding over
113 the proceeding excludes such parent or parents or guardian for good
114 cause shown.

115 Sec. 5. (NEW) (*Effective October 1, 2007, and in effect until October 1,*
116 *2009*) Any subpoena issued pursuant to sections 1 to 12, inclusive, of
117 this act shall compel the witness to appear and testify or produce the
118 property in the presence of a judge or judge trial referee at a specified
119 location in a courthouse in the judicial district where the incident or
120 incidents subject to investigation are alleged to have occurred or, if the
121 investigation is being conducted by a prosecuting official of a judicial
122 district other than the judicial district where the incident or incidents
123 subject to investigation are alleged to have occurred, in a courthouse in
124 that judicial district.

125 Sec. 6. (NEW) (*Effective October 1, 2007, and in effect until October 1,*
126 *2009*) If any subpoena is issued pursuant to sections 1 to 12, inclusive,
127 of this act for the production of the medical records, including
128 psychiatric and substance abuse treatment records, of a person, the
129 prosecuting official shall give written notice of the issuance of such
130 subpoena to such person. Such person shall have standing to file a
131 motion to quash the subpoena in accordance with section 9 of this act.

132 Sec. 7. (NEW) (*Effective October 1, 2007, and in effect until October 1,*
133 *2009*) (a) Whenever a subpoena is issued pursuant to sections 1 to 12,
134 inclusive, of this act, the prosecuting official shall, not later than
135 twenty-four hours after service of the subpoena, excluding weekends
136 and holidays, give written notice of the issuance of the subpoena to the
137 presiding judge for criminal matters in the courthouse where
138 compliance with the subpoena is required. Such notice shall include
139 the identity of the person and, if the production of property is
140 compelled, a description of the property. Such notice shall be
141 confidential and not subject to disclosure. The failure to give such
142 notice shall not invalidate the subpoena. Such presiding judge shall
143 assign a judge of the Superior Court or a judge trial referee to preside

144 over the proceeding. The assignment of such judge or judge trial
145 referee shall be confidential and not subject to disclosure. The judge or
146 judge trial referee assigned to preside over the proceeding shall be
147 present at all times during the proceeding. The proceeding shall not be
148 open to the public.

149 (b) Prior to any witness being questioned, the prosecuting official
150 shall, on the record, advise such person of the following: (1) Whether
151 such person is a target or possible target of the investigation, (2) that
152 such person has the right not to be compelled to give evidence against
153 himself or herself, (3) that such person has the right to have counsel
154 present and to consult with such counsel and, if such person is
155 indigent, to have counsel appointed to represent him or her, and (4)
156 that, if such person is under eighteen years of age, such person has the
157 right to have such person's parent or parents or guardian present
158 unless the judge or judge trial referee presiding over the proceeding
159 excludes such parent or parents or guardian for good cause shown.
160 The presiding judge shall assure that such rights are not infringed.

161 (c) A court reporter or assistant court reporter shall make a record of
162 the proceeding. The record of the proceeding shall be sealed and not
163 subject to disclosure, except that any witness who appeared and
164 testified shall be allowed access, at all reasonable times, to the record
165 of such witness' own testimony and shall have the right to receive a
166 copy of the transcript of the record of such testimony.

167 Sec. 8. (NEW) (*Effective October 1, 2007, and in effect until October 1,*
168 *2009*) If any witness properly summoned fails to appear or to produce
169 any property specified in the subpoena or, if having appeared, fails to
170 answer any proper question after an order directing the witness to
171 answer made by the judge or judge trial referee presiding over the
172 proceeding, the prosecuting official may apply to a judge of the
173 Superior Court in the judicial district as provided in section 5 of this
174 act, including the judge or judge trial referee presiding over the
175 proceeding, requesting the issuance of a *capias* or an order of

176 contempt, as appropriate, with respect to such witness. The application
177 of the prosecuting official and the order of the court shall be sealed as
178 to the public and not be subject to disclosure. The hearing on the
179 application shall not be open to the public.

180 Sec. 9. (NEW) (*Effective October 1, 2007, and in effect until October 1,*
181 *2009*) (a) Whenever a subpoena has been issued to compel the
182 appearance and testimony of a witness or the production of property
183 pursuant to sections 1 to 12, inclusive, of this act, the person
184 summoned may file a motion to quash the subpoena with the clerk of
185 the court for the judicial district as provided in section 5 of this act. No
186 fees or costs shall be assessed.

187 (b) The party filing the motion to quash shall be designated as the
188 plaintiff, and shall be described as "John Doe", "Jane Doe" or some
189 other alias, and the prosecuting official shall be designated as the
190 defendant.

191 (c) The motion, upon its filing, shall be sealed as to the public. The
192 motion shall be referred to the presiding criminal judge of the court for
193 hearing or for assignment to another judge for hearing. Unless
194 otherwise ordered by the judge conducting the hearing, the hearing
195 shall be conducted in camera and the file on the motion shall be sealed
196 as to the public, subject to further order of the court.

197 (d) The motion shall be expeditiously assigned and heard. The date
198 and time of the hearing shall be established by the clerk after
199 consultation with the judge assigned to conduct the hearing. The clerk
200 shall give notice to the parties of the hearing so scheduled.

201 (e) A judge may quash or modify any subpoena issued pursuant to
202 sections 1 to 12, inclusive, of this act for any just cause as may be found
203 by such judge or in recognition of any privilege established under law.

204 Sec. 10. (NEW) (*Effective October 1, 2007, and in effect until October 1,*
205 *2009*) (a) Whenever in the judgment of the prosecuting official, the

206 testimony of any witness of the production of property of any witness
207 is necessary to any investigation conducted pursuant to sections 1 to
208 12, inclusive, of this act, the prosecuting official may, with notice to the
209 witness, after the witness has claimed his or her privilege against self-
210 incrimination, make application to the court for an order directing the
211 witness to testify or produce property subject to the provisions of this
212 section.

213 (b) Upon the issuance of the order, such witness shall not be
214 excused from testifying or producing property in such proceeding on
215 the ground that the testimony or property required of such witness
216 may tend to incriminate such witness or subject such witness to a
217 penalty or forfeiture. No such witness may be prosecuted or subjected
218 to any penalty or forfeiture for or on account of any transaction, matter
219 or thing for which such witness is compelled to testify or produce
220 property, and no testimony or property so compelled, and no evidence
221 discovered as a result of or otherwise derived from testimony or
222 property so compelled, may be used as evidence against such witness
223 in any proceeding, except that no witness shall be immune from
224 prosecution for perjury or contempt committed while giving such
225 testimony or producing such property.

226 Sec. 11. (NEW) (*Effective October 1, 2007, and in effect until October 1,*
227 *2009*) All information and property obtained by a prosecuting official
228 as a result of the issuance of a subpoena pursuant to sections 1 to 12,
229 inclusive, of this act shall be confidential and not subject to disclosure,
230 except (1) such information and property as should, in the opinion of
231 such official, be used or disclosed in the performance of the official
232 duties of such official, or (2) as otherwise required by law or court
233 order. Any exculpatory information obtained with respect to any
234 person shall be disclosed to such person as required by law.

235 Sec. 12. (NEW) (*Effective October 1, 2007, and in effect until October 1,*
236 *2009*) All property produced as a result of the issuance of a subpoena
237 pursuant to sections 1 to 12, inclusive, of this act shall be returned to

238 the person from whom it was received if no criminal prosecution is
239 commenced involving the use of such property or shall be otherwise
240 disposed of as provided by law.

241 Sec. 13. Section 51-296 of the general statutes is repealed and the
242 following is substituted in lieu thereof (*Effective October 1, 2007, and in*
243 *effect until October 1, 2009*):

244 (a) In any criminal action, in any habeas corpus proceeding arising
245 from a criminal matter, in any extradition proceeding, [or] in any
246 delinquency matter or in any proceeding in which a witness has been
247 summoned by a subpoena issued pursuant to section 2 of this act, the
248 court before which the matter is pending shall, if it determines after
249 investigation by the public defender or [his] the public defender's
250 office that a defendant or a witness summoned by a subpoena issued
251 pursuant to section 2 of this act is indigent as defined under this
252 chapter, designate a public defender, assistant public defender or
253 deputy assistant public defender to represent such indigent defendant
254 or witness, unless, in a misdemeanor case, at the time of the
255 application for appointment of counsel, the court decides to dispose of
256 the pending charge without subjecting the defendant to a sentence
257 involving immediate incarceration or a suspended sentence of
258 incarceration with a period of probation or the court believes that the
259 disposition of the pending case at a later date will not result in a
260 sentence involving immediate incarceration or a suspended sentence
261 of incarceration with a period of probation and makes a statement to
262 that effect on the record. If it appears to the court at a later date that, if
263 convicted, the sentence of an indigent defendant for whom counsel has
264 not been appointed will involve immediate incarceration or a
265 suspended sentence of incarceration with a period of probation,
266 counsel shall be appointed prior to trial or the entry of a plea of guilty
267 or nolo contendere.

268 (b) In the case of codefendants, the court may appoint one or more
269 public defenders, assistant public defenders or deputy assistant public

270 defenders to represent such defendants or may appoint counsel from
271 the trial list established under section 51-291.

272 (c) Prior to [a defendant's appearance in court] the appearance in
273 court of a defendant in any matter specified in subsection (a) of this
274 section or of a witness summoned by subpoena issued pursuant to
275 section 2 of this act, a public defender, assistant public defender or
276 deputy assistant public defender, upon a determination that the
277 defendant or witness is indigent pursuant to subsection (a) of section
278 51-297, shall be authorized to represent the defendant or witness until
279 the court appoints counsel for such defendant or witness.

280 Sec. 14. (NEW) (*Effective October 1, 2007, and in effect until October 1,*
281 *2009*) On October 1, 2008, and annually thereafter, the Chief State's
282 Attorney shall submit a report, in accordance with the provisions of
283 section 11-4a of the general statutes, to the joint standing committee of
284 the General Assembly having cognizance of matters relating to
285 criminal law and procedure concerning the issuance of subpoenas
286 pursuant to sections 1 to 12, inclusive, of this act in the preceding year.
287 The report shall include the following information: (1) The number of
288 applications submitted for the issuance of a subpoena, and the number
289 of applications granted or denied, (2) the statutory offense or offenses
290 allegedly committed that were the subject of the investigation, (3) the
291 number of motions to quash a subpoena that were filed, and the
292 number of motions granted or denied, (4) the number of orders
293 granting a witness immunity from prosecution, (5) the number of
294 investigations concluded and the final result of such investigations,
295 and (6) the status of any criminal prosecution resulting from an
296 investigation.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2007, and in effect until October 1, 2009</i>	New section
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Sec. 2	<i>October 1, 2007, and in effect until October 1, 2009</i>	New section
Sec. 3	<i>October 1, 2007, and in effect until October 1, 2009</i>	New section
Sec. 4	<i>October 1, 2007, and in effect until October 1, 2009</i>	New section
Sec. 5	<i>October 1, 2007, and in effect until October 1, 2009</i>	New section
Sec. 6	<i>October 1, 2007, and in effect until October 1, 2009</i>	New section
Sec. 7	<i>October 1, 2007, and in effect until October 1, 2009</i>	New section
Sec. 8	<i>October 1, 2007, and in effect until October 1, 2009</i>	New section
Sec. 9	<i>October 1, 2007, and in effect until October 1, 2009</i>	New section
Sec. 10	<i>October 1, 2007, and in effect until October 1, 2009</i>	New section
Sec. 11	<i>October 1, 2007, and in effect until October 1, 2009</i>	New section
Sec. 12	<i>October 1, 2007, and in effect until October 1, 2009</i>	New section
Sec. 13	<i>October 1, 2007, and in effect until October 1, 2009</i>	51-296
Sec. 14	<i>October 1, 2007, and in effect until October 1, 2009</i>	New section

Statement of Purpose:

To give state prosecutors the tools necessary to investigate and prosecute serious crimes.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]